

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

*** FILED ***
11/12/2001

10/26/2001

CLERK OF THE COURT
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2001-014221
Docket Code 019 Page 1
FILED: _____

ROBERT W BURROWS

ROBERT W BURROWS
3101 N SEVENTH AVE
PHOENIX AZ 85013-0000

v.
BRIAN TORRY

ROGER K GILBERT
COURT ADMIN-CIVIL-CCC
MCSO-DIS
MCSO-OIC
PHX CITY MUNICIPAL COURT
HON. LANCE JACOB
PHOENIX CITY MUNICIPAL COURT
300 W WASHINGTON
PHOENIX AZ 85003

MINUTE ENTRY

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

The Court has received and reviewed Appellant's Memorandum; however, though Appellant's memorandum was served upon Appellee on September 25, 2001, no memorandum has been received from Appellee. Appellee's memorandum was due October 5, 2001. This Court has reviewed the record of the proceedings before the Honorable Lance Jacobs, Phoenix City Court Judge and the file of the Phoenix City Court.

Appellant appeals from an order by the Phoenix City Court continuing an Injunction Against Harassment after a hearing held by the Phoenix City Court on July 24, 2001. Initially, Appellee, Robert Burrows had requested the Injunction Against Harassment against Appellant, Brian Torry, who is Burrows' exwife's current husband. The Injunction was originally granted by the Phoenix City Court on July 6, 2001. Appellant requested a hearing on the Injunction on July 10, 2001. At the hearing on July 24, 2001,

both parties testified as well as Mrs. Torry. At the conclusion of the hearing on the injunction, the trial judge stated:

The only jurisdiction I have is over this Injunction, and in making my decision, quite frankly, I can't tell who the liar is and who the liar isn't, or whether you're both telling the truth, or what the problem is.... I can do this: I can order that the Injunction remain in full force and effect that way, hopefully, Mr. Burrows and Mr. Torry will stay away from one another.¹

The trial judge then continued the Injunction Against Harassment in full force and effect. Appellant filed a timely Notice of Appeal.

Appellant correctly contends that the trial judge erred in continuing the Injunction Against Harassment after he stated that he could not tell which party was telling the truth and which party was lying in court. Unfortunately, the trial judge failed to make any type of finding which would indicate that sufficient facts had been presented to him which warranted continuing the Injunction Against Harassment. Truly, the facts presented to Judge Jacobs were wholly incompatible: One must either believe Appellant or Appellee. The trial judge's conclusion that he did not know whom to believe is tantamount to a finding that Appellee had failed to satisfy his burden of proof that acts of harassment occurred and, therefore, the Injunction Against Harassment was warranted and should continue. For these reasons, this Court finds that the trial court erred continuing the Injunction Against Harassment when it could not find that acts of harassment had been committed by Appellant and that the Injunction should continue in full force and effect. The trial judge should have vacated the Injunction Against Harassment.

IT IS THEREFORE ORDERED reversing the Phoenix City Court's Order continuing the Injunction Against Harassment in this case.

IT IS FURTHER ORDERED quashing that Injunction Against Harassment, originally issued July 6, 2001.

¹ Appellant's Transcript of July 24, 2001 at 16-17.